

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPH ESCALADA

Claimant

VS.

KICE INDUSTRIES, INC.

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY

Insurance Carrier

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Docket No. 204,502

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Nelsonna Potts Barnes' March 27, 2000. On August 11, 2000, the Appeals Board heard oral argument in Wichita, Kansas.

APPEARANCES

Claimant appeared by his attorney, Robert R. Lee of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, Richard J. Liby, appearing for P. Kelly Donley of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded claimant a 5 percent permanent partial general disability for a May 15, 1995, work-related accident and resulting low-back injury. Claimant offered and the Administrative Law Judge admitted into the record a medical bill in the amount of \$525.54 for psychological treatment the claimant received for depression.

Claimant requested the Administrative Law Judge to order the respondent to pay this medical bill as an authorized medical expense. The Administrative Law Judge denied the request finding claimant had not proven the need for the psychological treatment was directly related to his work-related low-back injury.

On appeal, claimant contends the Administrative Law Judge should have considered the permanent partial functional impairment opinions of Pedro A. Murati, M.D., who was one of claimant's treating physicians, or Greg Ricke, M.D., who performed an independent medical evaluation of the claimant at the Administrative Law Judge's request, instead of the opinion of Philip R. Mills, M.D., regarding permanent functional impairment. Both Dr. Murati and Dr. Ricke found claimant had sustained a lumbosacral strain with evidence of radiculopathy. Dr. Murati rated claimant with a 13 percent whole body permanent functional impairment, and Dr. Ricke rated claimant with a 10 percent whole body permanent functional impairment. The claimant requests the Appeals Board to increase claimant's permanent partial general disability award based on either Dr. Murati's rating or Dr. Ricke's rating, or the average of those two ratings.

Additionally, the claimant argues he was referred on January 27, 1997, for treatment of his depression condition by the authorized treating physician, Dr. Murati. Therefore, the claimant contends the medical bill for the treatment in the amount of \$525.54 should be ordered paid by the respondent as an authorized medical expense.

Respondent, on the other hand, requests the Appeals Board to affirm the Administrative Law Judge's Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Appeals Board makes the following findings and conclusions:

Work disability is not an issue in this case. Thus, the narrow issue before the Appeals Board is the determination of claimant's permanent partial functional impairment resulting from his work-related low-back injury.¹

Pedro A. Murati, M.D., a physical medicine and rehabilitation physician, was appointed by the Administrative Law Judge as claimant's authorized treating physician for all treatment, tests and referrals in a preliminary hearing Order dated February 20, 1996. He found claimant to have a lumbosacral strain with evidence of radiculopathy. Dr. Murati last examined claimant on November 12, 1998. At that time, he assessed claimant with a 13 percent whole body permanent functional impairment.

¹See K.S.A. 44-510e(a).

During the litigation of this matter, the Administrative Law Judge appointed Greg Ricke, M.D., to perform an independent medical evaluation of the claimant. Dr. Ricke saw claimant on one occasion on April 25, 1997. Dr. Ricke did not testify in this case, but his independent medical evaluation report dated April 25, 1997, was stipulated as part of the record. Dr. Ricke diagnosed claimant with a low-back strain and left S1 radiculopathy. He found claimant to have a 10 percent whole body permanent functional impairment.

At the respondent attorney's request, physical medicine and rehabilitation physician Philip R. Mills, M.D., examined and evaluated the claimant on December 15, 1999. Dr. Mills' diagnosis was chronic lumbar pain, mild, with no evidence of radiculopathy. He found claimant had a 5 percent permanent functional impairment of the body as a whole.

The Administrative Law Judge adopted Dr. Mills' 5 percent permanent functional impairment rating and awarded claimant a 5 percent permanent partial general disability. The Administrative Law Judge found, from Dr. Mills' December 15, 1999, examination of the claimant and claimant's regular hearing testimony, that claimant's low-back condition had improved since he had been evaluated by Dr. Ricke on April 25, 1997, and Dr. Murati on November 12, 1998. The Administrative Law Judge concluded, based upon claimant's testimony and Dr. Mills' evaluation, that the claimant no longer suffered radiculopathy. Therefore, the Administrative Law Judge awarded claimant 5 percent permanent partial general disability based upon Dr. Mills' permanent functional impairment rating.

For the reasons found by the Administrative Law Judge, the Appeals Board agrees with the Administrative Law Judge's conclusion and affirms the 5 percent permanent partial general disability award.

At Dr. Murati's deposition, a medical bill in the amount of \$525.54 from COMCARE Comprehensive Community Care of Sedgwick County for treatment claimant received for depression was admitted into the record. On January 27, 1997, during Dr. Murati's treatment of the claimant for his low-back injury, he referred the claimant to COMCARE for psychological evaluation and treatment because of claimant's depression. Dr. Murati testified that claimant's depression was, at least in part, caused by his work-related low-back injury. The Administrative Law Judge denied claimant's request for an order for the respondent to pay the medical bill as an authorized medical expense. The Administrative Law Judge found claimant had failed to prove his depression was directly related to the work injury.

The Appeals Board disagrees and finds that Dr. Murati, as claimant's authorized treating physician which included referrals, established through his testimony that claimant's depression was, at least in part, related to his work injury. Therefore, the Appeals Board concludes and orders the respondent to pay the \$525.54 medical bill as an authorized medical expense.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' March 27, 2000, Award should be affirmed as to the conclusion that claimant is entitled to a 5 percent permanent partial general disability. But the Award should be reversed as to the Administrative Law Judge's conclusion that the medical bill from COMCARE in the amount of \$525.54 was not related to claimant's low-back injury. The Appeals Board orders the respondent to pay the COMCARE bill in the amount of \$525.54 as an authorized medical expense.

The Appeals Board adopts all remaining orders contained in the Award.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
P. Kelly Donley, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director